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9 Administrators, Inc.  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA

MIRIAH L. REYES,

Plaintiff,

v.

EXPRESS EMPLOYMENT  
PROFESSIONALS, a Washington  
limited liability company; and  
PLANNED ADMINISTRATORS  
INC., a foreign corporation,

Defendants.

No. CV-12-506-TOR

NOTICE TO FEDERAL COURT  
OF REMOVAL

18 **TO: The Honorable Judges of the United States District Court for the**  
19 **Eastern District of Washington, at Yakima.**

20 Pursuant to 28 U.S.C. §§ 1331, 1332, and 1441 *et seq.*, defendant  
21  
22 Planned Administrators, Inc., and Express Services, Inc.,<sup>1</sup> hereby jointly

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24 <sup>1</sup> Express Services, Inc. has not yet been named in this lawsuit or properly  
25 served. "Express Employment Professionals" is not an existing entity and  
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remove the above-captioned action from the Superior Court of the State of Washington for Grant County to this Court on the ground of jurisdiction based on federal question jurisdiction. The following statement is submitted in accordance with 28 U.S.C. § 1446:

1. On May 3, 2012 plaintiff Mariah L. Reyes filed this action against  
“Express Employment Professionals”<sup>2</sup> and Planned Administrators, Inc. in the  
Superior Court of the State of Washington for Grant County, now pending as  
Cause No. 12-2-00600-4, *Mariah Reyes v. Express Employment Professionals*  
*and Planned Administrators Inc.* Declaration of Randall P. Beighle (“Beighle  
Decl.”) ¶ 2 and Exhibit A (Summons and Complaint).<sup>3</sup>

2. Plaintiff served defendant Planned Administrators, Inc. with a  

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therefore has not been properly joined or served in this action. See 28 U.S.C.  
§ 1446(b)(2)(A) (only defendants who have been “properly joined and served”  
must join in or consent to the removal of the action). In an abundance of  
caution, Express Services, Inc. appears in this case and joins in removal of this  
action without waiving objections as to improper service or jurisdiction and  
preserves all rights under the Civil Rules.

<sup>2</sup> See footnote 1, *supra*.

<sup>3</sup> Unless otherwise noted, all exhibits referenced herein are attached to the Declaration of Randall P. Beighle.

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1 Summons and the Complaint on July 12, 2012. See Exhibit B (Service of  
 2 Process Transmittal). Planned Administrators entered a Notice of Appearance  
 3 on August 1, 2012. See Exhibit C (Notice of Appearance).

4  
 5. Plaintiff attempted to serve “Express Employment Professionals”  
 6 on July 18, 2012. See Exhibit D (Affidavit of Service). Express Services, Inc.  
 7 entered a Special Notice of Appearance on August 1, 2012, explaining that  
 8 “Express Employment Professionals” is not an existing entity and has not been  
 9 properly joined or served in the lawsuit. See Exhibit E (Special Notice of  
 10 Appearance).<sup>4</sup>

11  
 12. This Court is the United States District Court for the district and

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13  
 14  
 15<sup>4</sup> Since “Express Employment Services” has been neither properly joined nor  
 16 properly served, its joinder or consent is not needed for removal. See 28 U.S.C.  
 17 §§ 1441(a) and 1446(b)(2)(A) (only defendants who have been “properly joined  
 18 and served” must join in or consent to the removal of the action). To the extent  
 19 the Complaint is aimed at Express Services, Inc., that entity’s joinder or consent  
 20 in this removal is also not needed for removal, as Express Services, Inc.  
 21 likewise has been neither properly joined nor properly served in this matter. *Id.*  
 22 Nonetheless, and in an abundance of caution, Express Services, Inc. joins in and  
 23 consents to this removal.

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division within which Plaintiff's action in the Superior Court of Washington for Grant County is pending. See 28 U.S.C. § 1441(a).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and  
(c). On its face, the Complaint alleges that Plaintiff resides in Grant County,  
Washington. See Complaint ¶ 1.

## **JURISDICTION PURSUANT TO FEDERAL QUESTION**

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, which grants district courts jurisdiction over matters arising under a federal statute. 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”). In this case, Plaintiff’s Complaint arises under the federal Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et. seq.* (“ERISA”).

6. Plaintiff alleges that she worked for Express Employment Professionals (“Express”). See Complaint ¶ 4. By virtue of her employment with Express, Plaintiff alleges that she became a participant in a group insurance plan for medical care for Express employees and that premiums were deducted from her weekly paychecks. See Complaint ¶¶ 5-6. There can be no real dispute that the group insurance plan (the “Plan”) Plaintiff references in her

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1 Complaint is an employee welfare plan governed by ERISA. See Exhibit F  
 2 (relevant Plan excerpts).

3       7. Plaintiff alleges that the Plan administrator wrongfully denied  
 4 Plaintiff's claim for medical benefits under the Plan, and she seeks to recover  
 5 medical benefits allegedly owed to her under the Plan. See Complaint ¶¶ 7-10.  
 6

7       8. A defendant may remove a case on grounds that the plaintiff has  
 8 asserted a claim for benefits which is completely preempted by section 514(a)  
 9 of ERISA, 29 U.S.C. § 1144(a). *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58,  
 10 63-67 (1987). Section 514(a) is "clearly expansive" and designed to establish  
 11 benefit plan regulation as "exclusively a federal concern." *Egelhoff v. Egelhoff*,  
 12 532 U.S. 141 (2001); *N.Y. State Conference of Blue Cross & Blue Shield Plans*  
 13 *v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995); *Eppes v. NCNB Texas*, 7 F.3d  
 14 44, 45 (5th Cir. 1993). As stated by the Ninth Circuit:  
 15

16           Civil claims preempted by ERISA, and redressable under 29  
 17 U.S.C. § 1132(a), provide federal question jurisdiction because  
 18 Congress has "so completely" preempted this area "that any civil  
 19 complaint raising [section 1132(a)] claims is necessarily federal in  
 20 character."

21       *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 713 (9th Cir. 1990)

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1 (quoting *Taylor*, 481 U.S. at 63-64).

2 When a court must refer to an ERISA plan to determine the plaintiff's  
3 eligibility for benefits or other rights under the ERISA plan and to compute the  
4 damages claimed, the case "relates to" an ERISA plan and is therefore  
5 removable to federal court. *Eppes*, 7 F.3d at 45; *see also Nishimoto*, 903 F.2d  
6 at 713-14.

7 9. Here, Plaintiff's causes of action undisputedly "relate to" an  
8 ERISA plan. As set forth in paragraphs 6 and 7, *supra*, Plaintiff is seeking  
9 damages based on an alleged denial of supplemental life insurance benefits  
10 provided under the Plan, an employee welfare benefit plan as defined in  
11 ERISA. Thus, the Court will have to refer to the terms of the Plan to determine  
12 Plaintiff's rights under the Plan, if any, and to calculate any damages claimed.  
13 Accordingly, Plaintiff's action is a civil action raising a federal question, which  
14 may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441  
15 and 1446. *Nishimoto*, 903 F.2d at 713-14; *Eppes*, 7 F.3d at 45.

16 10. Without waiving any argument or defense that ERISA preempts  
17 any state law claims or causes of action asserted by Plaintiff in her complaint, to  
18 the extent that Plaintiff alleges other state law claims in her Complaint, 28  
19 U.S.C. § 1441(c) allows for removal of the entire case whenever a separate and  
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1 independent claim, which would be removable if sued upon alone, is joined  
2 with one or more otherwise non-removable claims. 28 U.S.C. § 1441(c);  
3 *Nishimoto*, 903 F.2d at 714 (“district court may exercise pendent jurisdiction  
4 over state law claims arising from a nucleus of operative fact common to both  
5 the state law claims and the ERISA claim”). Likewise, the Court also has  
6 supplemental jurisdiction over any alleged state law claims pursuant to 28  
7 U.S.C. § 1367, in that such claims “are so related to claims in the action within  
8 such original jurisdiction that they form part of the same case or controversy  
9 under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).  
10 Therefore, because this Court would have had jurisdiction over Plaintiff’s  
11 ERISA claims had they been filed originally in this Court, the entire case is  
12 removable to this Court pursuant to 28 U.S.C. §§ 1441(a)-(c), and 1446(a)-(b).

13       11. As required by 28 U.S.C. § 1446(b), this Notice of Removal is  
14 timely filed within thirty (30) days from the date on which the summons and  
15 complaint were served on defendant Planned Administrators, Inc. and within  
16 thirty (30) days from the date on which Plaintiff attempted service on “Express  
17 Employment Professionals.” See Exhibits B and D (evidencing service on  
18 July 12, 2012 and July 18, 2012).<sup>5</sup>

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<sup>5</sup> See also footnote 4, *supra*.  
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12. As required by 28 U.S.C. § 1446, a true and correct copy of all state court process, pleadings, or orders served on the removing parties to date are attached to the Beighle Declaration as Exhibits A through E.

13. By seeking removal, Defendants do not waive, and expressly reserve, all rights, defenses, or objections of any nature that they may have to Plaintiff's claims.

14. A copy of this Notice of Removal is being served upon Plaintiff's counsel pursuant to 28 U.S.C. § 1446(d). A copy of this Notice of Removal is also being filed with the clerk of the Superior Court of Washington for Grant County.

WHEREFORE, defendants Planned Administrators, Inc., and Express Services, Inc. give notice that Cause No. 12-2-00600-4, now pending in the Superior Court of Grant County, has been removed therefrom to this Court.

DATED: August 10, 2012

LANE POWELL PC

By

Randall P. Beighle,  
WSBA No. 13421  
[beighler@lanepowell.com](mailto:beighler@lanepowell.com)  
Attorneys for Defendant Planned  
Administrators, Inc.

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1 LUKINS & ANNIS, P.S.  
2  
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4 By   
5 Michael J. Hines, WSBA No. 19929  
6 Laura J. Black, WSBA No. 35672  
7 Attorneys for Defendant Express  
8 Services, Inc.

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## **CERTIFICATE OF SERVICE**

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 10<sup>TH</sup> day of August, 2012, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Mr. Patrick R. Acres (via electronic and overnight mail)

## Attorney at Law

1022 S Pioneer Way

Moses Lake, WA 98837-2271

Mr. Michael J. Hines

Lukins & Annis, P.S.

717 W Sprague Avenue, Suite 1600

Spokane, WA 99201-0466

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Executed on the 10th day of August, 2012, at Seattle, Washington.



Signature of Attorney  
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Typed Name: Randall P. Beighle  
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Attorney(s) For: Defendant Planned  
Administrators, Inc.

**NOTICE TO FEDERAL COURT OF REMOVAL -**

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